

REMARKS

This application pertains to a novel track support for a magnetic levitation railway.

Claims 19-27 are pending.

The specification is being amended to insert words that were missing (i.e., "lacuna") from the original text. This insertion concerns the prior art discussion only, and therefore does not constitute new matter. The word "lacuna" was present in the original text to indicate that something was missing from the sentence – see the attached definition of "lacuna", taken from the Merriam Webster on-line dictionary.

Claims 19 and 20 have been amended to substitute the term "--comprising--" for "consisting of", as it is clear from the totality of the specification that the closed language implicated by the term "consisting" was never intended. Thus, in original claim 1, at line 13, the expression "characterized in that" can be seen. MPEP 2111.03 provides that "characterized by" is "open" language. Note also that in the original claims, dependent claims, such as claims 9 and 10, add further limitations to claim 7, although claim 7 uses the word "consisting". Also note that in the specification, at page 4, the first sentence following the Brief description of the drawings, uses the word "consisting", but that the second sentence adds further elements. Thus it is clear that the amendment of the claims to recite --comprises-- is fully supported by the original specification and

claims.

Claims 20-27 stand objected to for various reasons indicated more specifically in the Office Action; but the Examiner has been kind enough to suggest wording changes that would overcome the objection. Applicants have incorporated each of the changes suggested by the Examiner, except for the insertion of "the" in front of "bolts" in claim 22, line 6. As Applicants read the particular phrase referred to, it appears to Applicants that the introduction of the word "the" would be incorrect as there is no antecedent support for "the bolts". The lines previous to this line recite "...a first hole adapted to accommodate a bolt..."; but this describes the character of the hole, and does not recite the presence of a bolt (at this point in the claim)...only that the hole *can* accommodate a bolt. Thus, the recitation of "bolts" in line 6 is the first time that the presence of the bolts is recited, and Applicants believe that the word "the" should therefore not be inserted.

It is believed that the foregoing amendments and comments overcome the objection to claims 20-27, and said objection should now be withdrawn.

Claims 19-27 stand rejected under 35 U.S.C. 112, second paragraph, for various reasons indicated more specifically in the Office Action. Once again, the Examiner has been gracious enough to suggest wording changes which would overcome the rejection, and Applicants have followed the Examiner's suggestions, with only two exceptions, both regarding the word "it".

Claim 20, lines 12 - 15, recites:

"... a horizontal support plate connecting each side wall web plate to the stator support web plate closest to it..."; and

"...another horizontal support plate connecting each side guidance rail to the stator support web plate closest to it..."

It is absolutely clear from the sentence structure that in the first case the "it" is the side wall web plate and in the second case it is the side guidance rail. There is no other construction that could legitimately be made of said phrases. Applicants believe that the present sentence structure is the clearest way of expressing the structural features involved and would prefer to leave it as it is. In a determined effort to accede to the Examiner's wishes, Applicants have tried to reconstruct the affected parts of the claim, but in each case any changes that might be made seemed to render the language awkward and less clear than it presently is. Reconsideration of Applicants' usage of the term "it" in claims 20 and 21, and withdrawal of the rejection of claims 19-27 under 35 U.S.C. 112, second paragraph, is respectfully requested.,

Claim 19 stands rejected under 35 U.S.C. 102(e)(1) as anticipated by Zinke (DE 197 35 471 C1).

The Examiner will note, however, that the structure of Applicants' claim 19

includes a horizontal plate (14,15 in Fig. 1) between the end of the stator support web plate and the side wall web plate, which, together with other parts of the structure, form closed cavities (19, 18). This is neither taught nor suggested by the Zinke reference.

Zinke shows in Fig. 1 two short sheets (23) which are arranged at a distance from each other. These sheets are described in column 3, line 36, as holding- and adjusting sheet with the function of a distance piecer. There is no teaching or suggestion to have closed cavities, such as Applicants', to reduce environmental influences. The holding- and adjusting sheets (13) are not similar to Applicants' horizontal support plates (14, 15).

The sections (21) are described in column 3, line 46, as wall panels (21) with the function of a transversal fin or rib. In Zinke, the section (21) is not closed, because there are no horizontal support plates (such as Applicants' 14 and 15).

Zinke cannot therefore be seen as teaching or suggesting Applicants' structure, and the rejection of claim 19 under 35 U.S.C. 102(e)(1) as anticipated by Zinke should now be withdrawn.

Applicants note with appreciation that claims 22 and 25 would be allowable if rewritten to overcome the 35 U.S.C. 112, second paragraph, rejection. In view of the present amendments and remarks, it is believed that all of the claims are now in condition for allowance.

Finally, Applicants would respectfully request that the Examiner indicate his approval of the drawing corrections previously submitted, so that Applicants might submit corrected formal drawings to the Official Draftsperson.

In view of the present amendments and remarks it is believed that claims 19-27 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted,
NORRIS, McLAUGHLIN & MARCUS

By 
William C. Gerstenzang

Reg. No. 27,552

WCG:tmh
220 East 42nd Street - 30th Floor
New York, New York 10017
(212) 808-0700

I hereby certify that this correspondence is being transmitted via facsimile, no. 703-873-9306 to the United States Patent and Trademark Office, addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 22, 2004.

By 
Julie Harting

Date January 22, 2004